

State of the Industry: Legal Updates

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Introduction



LATEST ISSUES AND
CONTRACT PROVISIONS



MAJOR CHANGES



Pollution and Vapors

Contractor disclaims all liability for pollution, odors, vapors and fumes (“Pollution”) emitted while performing work. To the maximum extent allowed by applicable law, Customer shall indemnify and hold the contractor harmless from all claims or damages relating to Pollution during installation or emanating from roofing materials installed on the project.

Existing Flashing Disclaimer

Unless the scope of work of this contract includes replacement of the existing flashing or installation of new flashing, Contractor shall reuse the existing flashing on the project. If Customer would like Contractor to install new flashing, it shall notify Contractor in writing prior to the start of work. Failure to provide this notice shall mean that Contractor will reuse the existing flashing and that Contractor disclaims liability for and that Customer shall hold Contractor harmless for any claim, occurrence, or damage that occurs as a result of the use of the existing flashing, including without limitation, water intrusion.

Overburden Provisions

- Contractor will remove all existing rooftop TV and satellite antennas if required to perform the work in the Agreement. However, Contractor will not be responsible to reinstall, realign or retune any antennas or satellites.
- Contractor disclaims liability pertaining to the removal or reinstallation of solar panels or accessories, including the performance of the solar panels or system once reinstalled. Customer is required to remove the solar panels prior to the start of Contractor's work.



Code Change Provision

- **The Agreement price is based upon the current codes and industry standards at the time of the submittal of the Agreement. Any codes or standards changes affecting the project after said date may result in a change order to the original contract to the extent additional work is required for compliance. Customer agrees to pay for all additional work required by new codes or standards issued after the effective date of the Agreement**

A photograph of a Chevron gas station with a blue and white canopy. The word "Chevron" is visible on the canopy. In the background, there are mountains and a clear sky. An orange horizontal bar is located in the top left corner of the image.

Change in Review of Agency Action

- Historically, the Chevron decision (1984) allowed regulatory agencies to interpret their own regulations.
- Recently, the US Supreme Court (*Loper v. Raimondi*) abolished the Chevron doctrine. Agency action is now subject to judicial review and interpretation.
- Court expressed concern over rapid expansion of federal agencies power beyond what is delegated by Congress.
- Friendly environment for challenging agency action



Kalkreuth Roofing v. OSHA

- Kalkreuth was working on a low slope roof. Had warning lines and safety monitor.
- OSHA cited them stating they still needed a personal fall arrest system.
- Lower courts ruled in favor of Kalkreuth.
- OSHA appeals. NRCA files an amicus brief in support of Kalkreuth.
- On appeal to Kentucky Court of Appeals. The Court notes that US Supreme Court's new decisions cutting against agency interpretation of its own rules affect the outcome.
- Rules in favor of Kalkreuth citing to its and NRCA's arguments that interpret the plain meaning of the regulation and that existing fall protection was sufficient.
- KY-OSHA asks for review of the KY Supreme Court.



Trump
Administration
Changes

Deregulation

- Sworn in on January 20, 2025.
 - Executive orders reversing many of President Biden's previous orders.
 - Executive Order: Temporary freeze on new regulations from federal agencies, including DOL/OSHA, NLRB, and the EPA.
 - Anticipate that Trump admin will no longer defend challenges to the overtime rule and independent contractor rules
 - Remember: states can be more restrictive than federal rules.
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Republican Control of House and Senate

- Repeal regulations of PFAS as hazardous and OSHA heat rule if enacted before January 20, 2025.
- Extend provisions of Tax Cuts and Jobs Act (TCJA).
- Help pass a massive tax package which will include regulatory reform, spending cuts, border protection, and more.



Energy Policies

- Move energy policy away from EPA electric vehicle mandate and subsidies for renewable energy.
- Claw back Inflation Reduction Act tax breaks and union-backed prevailing wage requirements.
- Executive Orders:
 - National Energy Emergency
 - Eliminate Environmental Justice Programs
 - Review federal regulations that create an undue burden on energy development



Immigration

- **Secure the border**
- **Mass deportations likely to target immigrants with criminal records first.**
- **Increase in ICE raids and I-9 audits**
- **Will impact sub-labor**
- **Executive Orders:**
 - **Bar Asylum from southern border**
 - **End birthright citizenship**
 - **End Refugee Admissions Program**
 - **Migrant crossing along border national emergency**

Tariffs

- **Executive Order – review Canada, Mexico, China, and others for implementation of tariffs.**
- **Creation of External Revenue Service**
- **Anticipate Congressional approval required.**
- **Will this impact raw materials needed for roofing systems? Possibly, but waivers are given generously.**

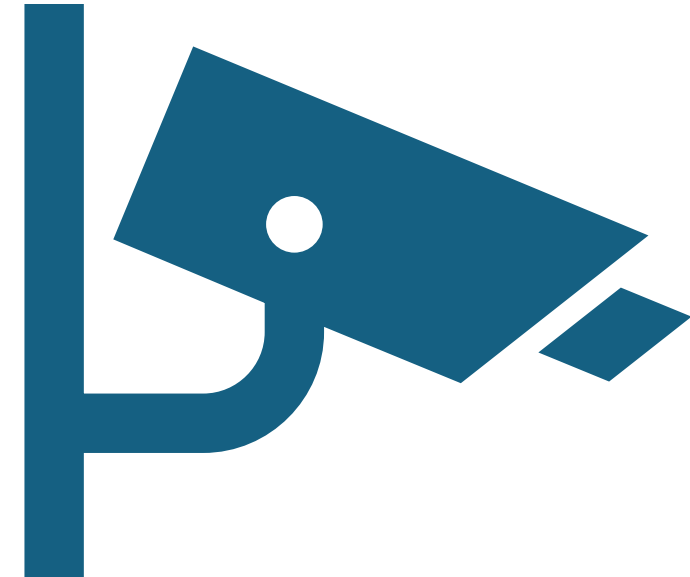


Corporate Transparency Act

- **Took effect on January 1, 2024. This means that most entities incorporated or registered to do business in a state must disclose information about its owners, officers, and other key stakeholders.**
- **This information must be provided to the Financial Crimes Enforcement Network, which is part of the U.S. Department of the Treasury.**

What Entities Must Report?

- **The CTA will primarily affect small businesses. Both domestic and foreign businesses are impacted. They include:**
- **Domestic reporting companies, such as corporations, LLPs, or other entities formed after filing with a secretary of state or similar office under state or tribal law**
- **Foreign reporting companies, such as corporations, LLCs, or other entities created per the law of a foreign country and registered to do business in a U.S. state or tribal jurisdiction**



What Companies Are Exempt?

- **Large Operating Companies** are exempt from the CTA, if they meet all these criteria:
 - **Employ more than 20 full-time workers in the United States**
 - **Operate physical offices in the United States**
 - **Report more than \$5 million in gross sales or receipts, as evidenced by the previous year's tax return**

What Information Is Required?

- **Entities that are required to report but provide information such as the following:**
- **The reporting company name and company's beneficial owners**
- **Applicants who filed the documents to create the entity or directed someone to do so**
- **A beneficial owner is defined as an individual with substantial control over a given company or an individual who owns (or controls) at least 25% interest in the company.**

What Is the Deadline?

- **If an entity was created before January 1, 2024, it must file its initial Beneficial Ownership Interest Report ("BOI Report") report by January 1, 2025.**
- **If an entity was formed on January 1, 2024, or later, it must file its initial BOI Report within 90 days of the company's creation.**

Should You Comply with CTA?

- TX District Court entered preliminary injunction.
- 5th District lifted ban on 12-23-24, then reinstated 12-26-24
- Comply until it is stopped by legal action, Congress, or Trump.
- Highly likely that a final injunction will be issued or the Trump administration will eliminate CTA in its entirety.

New IL Employment Laws

Illinois Equal Pay Act Amendment

- Illinois House Bill (HB) 3129 requires employers with 15 or more employees to list pay scales and benefits in all job postings. Specifically, job postings must now disclose the following:

1. A specific wage or salary (or a range)
2. A description of benefits and other forms of compensation, such as stock options and bonuses



Update to E-Verify Authorization

Amendments to the Illinois Right to Privacy Act introduced new responsibilities for employers using the federal E-Verify system to confirm employees' work authorization. While E-Verify remains voluntary in Illinois, employers who use it must now meet the following obligations:

- 1. Notify employees if a “no match” occurs in their employment verification.**
- 2. Provide the employee with specific details about the discrepancy, including the deficient document(s), reasons for the deficiency, and access to the original document if requested.**
- 3. Offer clear instructions on how the employee can resolve the issue.**
- 4. Inform the employee of their right to representation during any meetings or proceedings related to the discrepancy.**

Child Labor Laws

Illinois Senate Bill (SB) 3646 overhauled the state's child labor laws with the Child Labor Law of 2024. Key provisions include the following:

1. Employers must obtain work certificates for minors and maintain records on-site.
2. There are restrictions on work hours for minors under 16 years old, such as:
 - No more than 18 hours per week during the school year.
 - No more than 40 hours per week when school is not in session.
 - No work after 7 p.m. (9 p.m. in summer) or before 7 a.m.
3. Mandatory supervision by an adult aged 21 or older is required.
4. Minors are prevented from working more than five continuous hours without a meal break of at least 30 minutes.

Changes to Non-Compete Law in IL

SB 2770

- A covenant not to compete or a covenant not to solicit is void and illegal with respect to individuals employed in construction, regardless of whether an individual is covered by a collective bargaining agreement.
- This subsection does not apply to construction employees who primarily perform management, engineering or architectural, design, or sales functions for the employer or who are shareholders, partners, or owners in any capacity of the employer.

IL Whistleblower Act

Illinois House Bill (HB) 5561 expanded the Illinois Whistleblower Act. Employers are now prohibited from mistreating or otherwise retaliating against employees who:

1. Disclose or threaten to disclose unlawful activities to supervisors or other designated individuals.
2. Report activities they reasonably believe pose a significant danger to public health or safety.

The definition of “adverse action” has been broadened to include any action that could discourage an employee from making a protected disclosure.

Record Retention

Illinois House Bill (HB) 3763 introduced new rules for pay stub access and record retention. Employers are required to:

- 1. Retain employee pay stubs for at least three years after payment.**
- 2. Provide copies of pay stubs to current employees within 21 days of a request. Requests are limited to two per year.**
- 3. Provide former employees with their pay stubs within 21 days of a request, as long as the request is made within one year of their separation.**

If electronic pay stubs are inaccessible after an employee's departure, the employer must offer a comprehensive record of pay stubs for the preceding year at the time of separation. Violators can face civil penalties of up to \$500 per violation.

Expanded Protections Under the Illinois Human Rights Act

New amendments to the Illinois Human Rights Act prohibit discrimination based on protected characteristics, which include reproductive health decisions or family responsibilities. Employers cannot:

- 1. Discriminate against employees for decisions related to contraception, pregnancy, or fertility treatments.**
- 2. Discriminate against employees for their family responsibilities, which can include transportation and caregiving.**
- 3. Make assumptions about employees' work performance based on their family decisions or obligations. However, employers are not required to make revisions to their leave, attendance, and performance policies.**

Complainants now have two years (up from 300 days) to file grievances with the Illinois Department of Human Rights.

Antitrust

Active Federal investigation by the Department of Justice antitrust division.

To date, there has been a press release issued by DOJ where four individuals and one company plead guilty to bid rigging. There are more to follow.

Potential penalties: up to 10 years in federal prison, up to \$1M in individual fines, up to \$100M for company fines.

Civil penalties – double damages and attorney's fees.



Questions?

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